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**UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF CALIFORNIA**

ANTONY GREEN; on behalf of himself,
and on behalf of all persons similarly
situated,

Plaintiffs,

vs.

AT&T SERVICES, INC., a corporation
doing business as AT&T; and DOES 1
through 10,

Defendants.

CASE No. **09 CV 1760 JM NLS**

COMPLAINT FOR DAMAGES,
RESTITUTION, AND INJUNCTIVE
RELIEF:

(1) UNFAIR COMPETITION IN
VIOLATION OF CAL. BUS. & PROF.
CODE § 17200 *et seq.*;

(2) FAILURE TO PAY EARNED
WAGES AND OVERTIME
COMPENSATION IN VIOLATION OF
CAL. LAB. CODE §§ 204, 210, 218,
510, 1194 AND 1198;

(3) FAILURE TO PROVIDE
ACCURATE ITEMIZED STATEMENTS
IN VIOLATION OF LABOR CODE §
226; and,

(4) VIOLATION OF FAIR LABOR
STANDARDS ACT [29 U.S.C. § 216]

DEMAND FOR A JURY TRIAL

INTRODUCTION

1. This class action is brought by Plaintiff Antony Green ("PLAINTIFF") individually and on behalf of present and former employees of AT&T SERVICES, INC., doing business as AT&T ("DEFENDANT") who were scheduled for on-call time in California during the Class Period. DEFENDANT failed to correctly pay regular and overtime compensation for PLAINTIFF and other similarly situated employees because DEFENDANT systematically failed to pay PLAINTIFF and other similarly situated employees for the actual numbers of hours worked, regular and/or overtime, during the CLASS PERIOD. These employees were placed onto standby, on-call duty but were not paid the required compensation for these hours worked, regular and/or overtime, during the CLASS PERIOD. The DEFENDANT's on-call policies require these employees to respond instantly to automatic pages, twenty-four (24) hours a day, seven (7) days a week, which restricts their activities and geographic location, with no compensation paid for the on-call, stand-by work time. As a result, PLAINTIFF and other employees did not receive compensation for all hours worked, including but not limited to the overtime hours worked. The wage statements and DEFENDANT's practices with respect to such wage statements issued to PLAINTIFF and other similarly situated employees also violate California law, and in particular, Labor Code § 226 because the on-call time is not correctly reported as hours worked. The policies and practices of DEFENDANT alleged herein constitute deceptive, unfair and/or unlawful business practices whereby DEFENDANT retained wages due PLAINTIFF and other similarly situated employees for all hours worked. PLAINTIFF seeks an injunction enjoining such conduct by DEFENDANT in the future, relief for the named PLAINTIFF and other similarly situated employees as set forth herein below, and all other appropriate equitable relief.

2. Defendant AT&T SERVICES, INC., is a corporation with headquarters in Texas. AT&T SERVICES, INC. conducts business under the name "AT&T", and is collectively referred to herein as "AT&T" or "DEFENDANT". AT&T is the party who established and is responsible for the practices alleged herein. DEFENDANT is engaged in

1 the business of providing broadband and other wireless and wireline communications
2 services to mass market, business, government and wholesale customers throughout
3 California and the United States. Specifically, DEFENDANT provides Information
4 Technology ("IT") services throughout California, including in San Diego County, Los
5 Angeles County, Orange County, Santa Clara County, San Mateo County and Alameda
6 County, where members of the Class alleged herein work and reside.

7 3. DEFENDANT conducted and continues to conduct substantial and
8 regular business throughout California and also is an enterprise that affects commerce by
9 engaging in the enterprise of engaging in nationwide communications through interstate
10 commerce and by regularly and recurrently receiving or transmitting interstate
11 communications.

12 4. AT&T is based in Texas and incorporated in Delaware. AT&T continues to
13 have a nationwide presence in wireline and wireless markets, with millions of Americans
14 connecting to a AT&T network daily. AT&T generated more than \$124 billion in 2008 total
15 consolidated operating revenues, and at year-end 2008, AT&T had approximately 300,000
16 employees.

17 18 CONDUCT

19 5. AT&T's business involves the providing of providing IT, wireline, and
20 broadband services to consumers, companies, businesses and government entities. In order
21 to provide these continuous services, AT&T employs a staff who maintain the hardware,
22 software, applications and desktops for AT&T and its end-users. AT&T requires this
23 maintenance staff to work at all hours of the night and day to keep the services operation and
24 to resolve problems immediately. As a result, non-exempt IT Maintenance Staff are
25 required to remain on-call standby. AT&T's on-call policies require these employees to
26 respond within 15 minutes of being called and require immediate resolution of the issue
27 depending upon system to be repaired, twenty-four (24) hours a day, seven (7) days a week.
28 The on-call standby employees are contacted via automatic pages sent via the AT&T

1 computer system and calls to the employee's home. These requirements so restrict and
2 control the employee, that these employees are unable to engage in private pursuits. AT&T
3 does not pay any compensation for the on-call stand-by hours, even though these hours
4 qualify as hours worked.

5 6. The non-exempt employees who perform IT maintenance duties have
6 been given the titles of "computer technical workers", "information technology support
7 workers" and other similar nomenclature. Collectively, employees in these positions are
8 referred to herein as the "IT Maintenance Staff." The work performed by these employees
9 primarily involves the day to day labor required to maintain, repair, troubleshoot, build and
10 monitor the computerized IT system for AT&T and end-users. The work performed by
11 these employees also requires performance of non-office, manual labor, including but not
12 limited to carrying, lifting, bending and physical installation of computer hardware parts and
13 components. As a matter of course, technical problems often arise with this equipment at all
14 hours of the day and at all hours of the night. Responding to these problems and
15 maintenance demands are not only performed throughout the normal workday, but also
16 pursuant to an on-call policy imposed by AT&T by which these employees were and still are
17 responsible to respond to calls and perform troubleshooting work to resolve the problems at
18 issue at all hours of the night. All of these job duties are non-exempt job duties. These
19 employees perform these functions according to established company policies, protocols,
20 and procedures. This action involves the uniform policies and practices of AT&T with
21 respect to a Class consisting of all IT Maintenance Staff members who were classified by
22 AT&T as non-exempt hourly employees and who were scheduled for on-call standby work
23 during the applicable Class Period as set forth herein (the "CLASS").

24 7. Plaintiff Antony Green is an employee of DEFENDANT and continues to
25 work for DEFENDANT to the present day. During the CLASS PERIOD, PLAINTIFF was
26 and still is employed by DEFENDANT in a non-exempt IT Maintenance Staff position. As
27 a non-exempt IT Maintenance Staff employee, PLAINTIFF was and still is required to
28 perform standby on-call work pursuant to DEFENDANT's on-call policy which requires

1 these employees including PLAINTIFF to respond within 15 minutes of being called and
2 requires immediate resolution of the issue, twenty-four (24) hours a day, seven (7) days a
3 week, with no compensation being paid for this on-call standby work and/or with
4 miscalculated compensation being paid for the on-call repair work as a result of the
5 miscalculation of split shift compensation. Therefore, DEFENDANT as a matter of a
6 uniform policy and practice failed to correctly pay PLAINTIFF for the hours spent under the
7 control of DEFENDANT when performing on-call standby work and/or repair work during
8 on-call shifts during the applicable CLASS PERIOD. As a result, PLAINTIFF did not
9 receive the correct compensation for all hours worked, including but not limited to the
10 overtime hours worked. The wage statements received by PLAINTIFF from DEFENDANT
11 also failed to contain all of the required information in violation of Labor Code § 226(a), and
12 DEFENDANT also miscalculated the compensation due PLAINTIFF when paged or called
13 by DEFENDANT during on-call shifts to perform repair work by failing to include the
14 required split shift compensation.

15 8. The work schedule and on-call schedule for PLAINTIFF and other IT
16 Maintenance Staff employees is dictated by the general management of AT&T to which they
17 directly report, and the demands of work. The on-call schedule for PLAINTIFF when
18 scheduled for an on-call shift is twenty-four hours a day during both the week and
19 weekends. The on-call schedule and on-call requirements so restrict the activities and
20 geographic location of the IT Maintenance Staff employees that the on-call hours constitute
21 hours worked.

22 9. For this on-call stand-by work, PLAINTIFF and other IT Maintenance Staff
23 employees receive no compensation and/or receive miscalculated compensation for repair
24 work when pages or calls are received. When PLAINTIFF and other IT Maintenance Staff
25 employees are subject to on-call pages and on-call repairs, PLAINTIFF and other IT
26 Maintenance Staff employees are required to immediately respond and perform the required
27 work. The records of the DEFENDANT will evidence the on-call work. When an on-call
28 page is received, and PLAINTIFF and other members of the CLASS are required to perform

1 repair, maintenance and troubleshooting duties for which time they are compensated by
2 DEFENDANT only for the time performing the repair, maintenance or troubleshooting duty,
3 which as a result constitutes a split shift under California law. As a uniform company
4 practice and policy, DEFENDANT fails to correctly pay the members of the CLASS
5 compensation for the split shift as is required by California law, and therefore systematically
6 miscalculates the compensation for these members of the CLASS.

7 10. PLAINTIFF and the other IT Maintenance Staff employees were and are
8 employed as working members of the production side of DEFENDANT's business. The
9 primary job duties of PLAINTIFF and IT Maintenance Staff employees were and are to
10 troubleshoot, repair, configure, and maintain computers systems of DEFENDANT and
11 DEFENDANT's clients, using manual labor and computer technician skills. As a result,
12 PLAINTIFF and the other non-exempt on-call employees were not and currently are not
13 primarily involved in providing office or non-manual work directly related to the
14 management policies or general business operations with respect to matters of significance.
15 The work of PLAINTIFF and the other non-exempt on-call employees also does not involve
16 specialized or technical work that requires special training, experience or knowledge. The
17 work of PLAINTIFF and other non-exempt on-call employees also does not involve the
18 management of the enterprise and these employees do not customarily and regularly exercise
19 discretion and independent judgment. Instead, PLAINTIFF and the other non-exempt on-
20 call IT Maintenance Staff employees were and currently are primarily involved in providing
21 day to day, routine, and general, manual labor related to the production and delivery of
22 DEFENDANT's business products. Physical demands of the position include standing,
23 sitting, walking, bending, counting, checking, talking, and installing products.

24 11. DEFENDANT's unlawful, unfair, and deceptive employment and wage
25 practices cheat the PLAINTIFF and the other IT Maintenance Staff employees out of their
26 lawful wages due for all hours worked as required by California and federal law.

27 12. PLAINTIFF brings this class action on behalf of himself and a Class
28

1 consisting of all individuals who are or previously were employed by DEFENDANT in a IT
2 Maintenance Staff position in California that was classified by DEFENDANT as non-
3 exempt, and who were scheduled for on-call standby work (the "CLASS") during the
4 CLASS PERIOD. The class period applicable to this CLASS is defined as the period
5 beginning four years prior to the filing of this Complaint and ending on the date of as
6 determined by the Court (the "CLASS PERIOD"). As a matter of company policy and
7 practice, DEFENDANT uniformly classified every member of the CLASS as non-exempt,
8 but failed to pay the required straight and overtime compensation due these employees for
9 all hours worked, and otherwise failed to comply with all labor laws with respect to these
10 employees.

11 13. Individuals in the CLASS are and were employees who are entitled to regular,
12 and overtime compensation and prompt payment of amounts that the employer owes an
13 employee for all hours worked when the employee quits or is terminated, and other
14 compensation and working conditions that are prescribed by law. Although DEFENDANT
15 required the employees in the CLASS to work more than forty (40) hours a week, eight (8)
16 hours in a workday, and /or on the seventh (7th) day of a workweek, as a matter of company
17 policy and practice, DEFENDANT consistently and uniformly failed and still fails to
18 implement a practice and procedure that compensates for all hours worked by these
19 employees, including on-call time. The PLAINTIFF and members of the CLASS currently
20 work or previously worked on-call in California at times during the CLASS PERIOD for
21 DEFENDANT and DEFENDANT's practices and procedures as alleged herein are and were
22 common throughout California at all relevant times.

23 14. In this action, PLAINTIFF, on behalf of himself and the CLASS, seeks to
24 recover all the money that DEFENDANT was required by law to pay, but failed to pay, to
25 PLAINTIFF and all other CLASS members for work performed. PLAINTIFF also seeks
26 penalties and all other relief available to him and other similarly situated employees under
27 California law. PLAINTIFF also seeks declaratory relief finding that the employment
28

1 practices and policies of the DEFENDANT violate California law and injunctive relief to
2 enjoin the DEFENDANT from continuing to engage in such employment practices and as
3 necessary to remedy the unfair and unlawful employment practices.

4 15. PLAINTIFF and all members of the CLASS are and were classified under
5 Industrial Welfare Commission Wage Order 1-2001 and Cal. Lab. Code §§ 510 *et seq.* and
6 Section 13(a)(5) of the Fair Labor Standards Act (the "FLSA") as non-exempt from
7 applicable federal and state labor laws. Under both the FLSA and California Labor Law,
8 these employees may only be classified as exempt if the employee primarily engages in
9 duties and responsibilities involving (i) the "performance of office or non-manual work
10 directly related to management policies or general business operations" of DEFENDANT,
11 (ii) the customary and regular exercising of discretion and independent judgment, (iii)
12 performed only under general supervision work along specialized or technical lines requiring
13 special training, experience, or knowledge, and (iv) is paid a monthly salary equivalent to
14 two times the minimum wage for full-time employment. PLAINTIFF and the other
15 members of the CLASS do not meet all of these requirements. As a result of the
16 DEFENDANT's consistent policy and practice as herein alleged, DEFENDANT failed and
17 still fail to pay overtime and other required compensation in accordance with applicable law.

18 16. By reason of this uniform conduct applicable to PLAINTIFF and all
19 members of the CLASS, DEFENDANT committed acts of unfair competition in violation of
20 the California Unfair Competition Law, Cal. Bus. & Prof. Code § 17200 (the "UCL"), by
21 engaging in a company-wide policy and procedure which failed to correctly pay the
22 PLAINTIFF and the CLASS of similarly situated employees all compensation required for
23 all hours worked. DEFENDANT violated the FLSA and the California Labor Code and
24 regulations promulgated thereunder as herein alleged.

25 17. PLAINTIFF and the members of the CLASS have no plain, speedy or
26 adequate remedy at law and will suffer irreparable injury if DEFENDANT is permitted to
27 continue to engage in the unlawful acts and practices herein alleged. The illegal conduct
28 alleged herein is continuing and to prevent future injury and losses, and to avoid a

1 multiplicity of lawsuits, PLAINTIFF is entitled to an injunction and other equitable relief,
 2 on behalf of himself and the CLASS, to prevent and enjoin such practices. PLAINTIFF
 3 therefore requests a preliminary and/or permanent injunction as the DEFENDANT provides
 4 no indication that DEFENDANT will not continue such wrongful activity in the future,
 5 along with restitution, penalties, interest, compensation and other equitable relief as
 6 provided by law.

7 8 THE CLASS

9 18. PLAINTIFF brings this class action on behalf of himself and a Class
 10 consisting of all individuals who are or previously were employed by DEFENDANT in a IT
 11 Maintenance Staff position in California that was classified by DEFENDANT as non-
 12 exempt and who were scheduled for on-call standby work (the "CLASS") during the CLASS
 13 PERIOD. To the extent equitable tolling operates to toll claims by the CLASS against
 14 DEFENDANT, the CLASS PERIOD should be adjusted accordingly.

15 19. The California Legislature has commanded that "all wages... ..earned by any
 16 person in any employment are due and payable twice during each calendar month, on days
 17 designated in advance by the employer as the regular paydays", and further that "[a]ny
 18 work in excess of eight hours in one workday and any work in excess of 40 hours in any one
 19 workweek...shall be compensated at the rate of no less than one and one-half times the
 20 regular rate of pay for an employee." (Lab. Code §204 and §510(a).) The Industrial
 21 Welfare Commission (IWC), however, is statutorily authorized to "establish exemptions
 22 from the requirement that an overtime rate of compensation be paid... ..for executive,
 23 administrative, and professional employees, provided [inter alia] that the employee is
 24 primarily engaged in duties that meet the test of the exemption, [and] customarily and
 25 regularly exercises discretion and independent judgment in performing those duties..." (Lab.
 26 Code §510(a).) Neither the PLAINTIFF nor the other members of the CLASS qualify for
 27 exemption from the above requirements.

28 20. DEFENDANT, as a matter of company policy, practice and procedure, and

1 in violation of the applicable Labor Code, Industrial Welfare Commission ("IWC") Wage
2 Order Requirements, and the applicable provisions of California law, intentionally,
3 knowingly, and wilfully, engaged in a practice whereby DEFENDANT failed to pay for all
4 hours worked by PLAINTIFF and the other members of the CLASS, even though
5 DEFENDANT enjoyed the benefit of this work, required employees to perform this work
6 and permitted or suffered to permit this on-call work. DEFENDANT, as a matter of
7 company policy, practice and procedure, and in violation of the Industrial Welfare
8 Commission ("IWC") Wage Order Requirements, and the applicable provisions of
9 California law, intentionally, knowingly, and wilfully, engaged in a practice whereby
10 DEFENDANT miscalculated the compensation paid to PLAINTIFF and the other members
11 of the CLASS for on-call repair, maintenance and troubleshooting work performed in
12 response to a page or call by failing to include the split shift compensation.

13 21. DEFENDANT has the legal burden to establish that each and every
14 non-exempt employee is paid for all hours worked, to accurately record all hours worked by
15 non-exempt employees, and to accurately record split shift intervals. The DEFENDANT,
16 however, as a matter of uniform and systematic policy and procedure failed to have in place
17 during the CLASS PERIOD and still fails to have in place a policy or practice to accurately
18 record hours worked, including on-call hours and split shift intervals, so as to satisfy their
19 burden. This common business practice applicable to each and every CLASS member can
20 be adjudicated on a class-wide basis as unlawful, unfair, and/or deceptive under Cal.
21 Business & Professions Code §17200, *et seq.* (the "UCL") as causation, damages, and
22 reliance are not elements of this claim.

23 22. At no time before or during PLAINTIFF's employment with DEFENDANT
24 was the compensation for any member of the CLASS properly recalculated so as to
25 compensate the employee for all hours worked, including on-call time, and/or split shift
26 compensation as required by California Labor Code §§ 204 and 510, *et seq.*

27 23. The CLASS, numbering more than 100 members, is so numerous that joinder
28 of all members of the CLASS is impracticable

1 24. DEFENDANT uniformly violated the rights of the CLASS under California
2 law by:

3 (a) Violating the California Unfair Competition Laws, Cal. Bus. & Prof.
4 Code § 17200, et seq., by unlawfully, unfairly and/or deceptively having in place company
5 policies, practices and procedures that failed to pay all wages due the CLASS for all hours
6 worked, including on-call, stand-by time and failed to accurately record all hours worked by
7 the CLASS, including on-call, stand-by time;

8 (b) Violating Cal. Lab. Code § 204 and §510, et seq. by failing to pay the
9 correct wage and overtime pay owed to PLAINTIFF and the members of the CLASS for
10 regular and overtime hours worked, including compensation for on-call standby time and/or
11 split shift compensation;

12 (d) Violating Cal. Lab. Code § 226 by failing to provide PLAINTIFF and
13 the members of the CLASS with an accurate itemized statement in writing showing the
14 gross wages earned, the net wages earned, all applicable hourly rates in effect during the pay
15 period, split shift intervals, and the corresponding number of hours worked at each hourly
16 rate by the employee; and,

17 (e) Violating Cal. Lab. Code §§ 210, 202 and 203 by failing to provide
18 timely payment of all wages owed to the members of the CLASS who failed to receive the
19 correct wages for all hours worked, including compensation for on-call standby time and/or
20 split shift compensation, and who have terminated their employment.

21 25. This Class Action meets the statutory prerequisites for the maintenance of a
22 Class Action as set forth in Federal Rules of Civil Procedure, Rule 23, in that:

23 (a) The persons who comprise the CLASS exceed 100 persons and
24 are therefore so numerous that the joinder of all such persons is impracticable and the
25 disposition of their claims as a class will benefit the parties and the Court;

26 (b) Nearly all factual, legal, statutory, declaratory and injunctive
27 relief issues that are raised in this Complaint are common to the CLASS will apply
28 uniformly to every member of the CLASS;

1 (c) The claims of the representative PLAINTIFF are typical of the
2 claims of each member of the CLASS. PLAINTIFF, like all other members of the CLASS,
3 was and still is a non-exempt employee who was subjected to the DEFENDANT's practice
4 and policy which failed to pay all wages due the CLASS for all hours worked, including on-
5 call time, and failed to accurately record and pay for all hours worked, including on-call
6 time. PLAINTIFF sustained economic injury as a result of DEFENDANT's employment
7 practices alleged herein. PLAINTIFF and the members of the CLASS were and are
8 similarly or identically harmed by the same unlawful, deceptive, unfair and pervasive pattern
9 of misconduct engaged in by DEFENDANT.

10 (d) The representative PLAINTIFF will fairly and adequately
11 represent and protect the interest of the CLASS, and has retained counsel who are competent
12 and experienced in class action litigation. There are no material conflicts between the
13 claims of the representative PLAINTIFF and the members of the CLASS that would make
14 class certification inappropriate. Counsel for the CLASS will vigorously assert the claims of
15 all members of the CLASS.

16 26. In addition to meeting the statutory prerequisites to a Class Action, this action
17 is properly maintained as a class action pursuant to Federal Rules of Civil Procedure, Rule
18 23, in that:

19 (a) Without class certification and determination of declaratory,
20 injunctive, statutory and other legal questions within the class format, prosecution of
21 separate actions by individual members of the CLASS will create the risk of:

22 1) Inconsistent or varying adjudications with respect to
23 individual members of the CLASS which would establish incompatible standards of conduct
24 for the parties opposing the CLASS; and/or,

25 2) Adjudication with respect to individual members of the
26 CLASS which would as a practical matter be dispositive of interests of the other members
27 not party to the adjudication or substantially impair or impede their ability to protect their
28 interests.

1 (b) The parties opposing the CLASS have acted or refused to act on
2 grounds generally applicable to the CLASS, making appropriate class-wide relief with
3 respect to the CLASS as a whole in that the DEFENDANT uniformly failed to pay all wages
4 due, including the correct overtime, for all hours worked by the members of the CLASS;

5 1) With respect to the First Cause of Action, the final relief
6 on behalf of the CLASS sought does not relate exclusively to restitution because through
7 this claim PLAINTIFF seek declaratory relief holding that the DEFENDANT's policy and
8 practices constitute unfair competition, along with injunctive relief, and incidental equitable
9 relief as may be necessary to prevent and remedy the conduct declared to constitute unfair
10 competition;

11 (c) Common questions of law and fact exist as to the members of
12 the CLASS with respect to the practices and violations of California law as listed above, and
13 predominate over any question affecting only individual members, and a class action is
14 superior to other available methods for the fair and efficient adjudication of the controversy,
15 including consideration of:

16 1) The interests of the members of the CLASS in
17 individually controlling the prosecution or defense of separate actions in that the substantial
18 expense of individual actions will be avoided to recover the relatively small amount of
19 economic losses sustained by the individual employees when compared to the substantial
20 expense and burden of individual prosecution of this litigation;

21 2) Class certification will obviate the need for unduly
22 duplicative litigation that would create the risk of: (a) Inconsistent or varying adjudications
23 with respect to individual members of the CLASS which would establish incompatible
24 standards of conduct for the DEFENDANT; and/or, (b) Adjudications with respect to
25 individual members of the CLASS would as a practical matter be dispositive of the interests
26 of the other members not parties to the adjudication or substantially impair or impede their
27 ability to protect their interests;

28 3) In the context of wage litigation because a substantial

1 number of individual class members will avoid asserting their legal rights out of fear of
2 retaliation by DEFENDANT, which may adversely affect an individual's job with
3 DEFENDANT or with a subsequent employer, the class action is the only means to assert
4 their claims through a representative; and,

5 4) A class action is superior to other available methods for the fair
6 and efficient adjudication of this litigation because class treatment will obviate the need for
7 unduly and unnecessary duplicative litigation that is likely to result in the absence of
8 certification of this action pursuant to Fed. R. Civ. Proc., rule 23.

9 27. This Court should permit this action to be maintained as a Class Action
10 pursuant to Federal Rules of Civil Procedure, rule 23, because:

11 (a) The questions of law and fact common to the CLASS
12 predominate over any question affecting only individual members because the
13 DEFENDANT's employment practices were uniformly and systematically applied with
14 respect to the entire CLASS;

15 (b) A class action is superior to any other available method for the
16 fair and efficient adjudication of the claims of the members of the CLASS because in the
17 context of employment litigation a substantial number of individual employees will avoid
18 asserting their rights individually out of fear of retaliation or adverse impact on their
19 employment;

20 (c) The members of the CLASS exceed 100 people and are therefore
21 so numerous that it is impractical to bring all members of the CLASS before the Court;

22 (d) PLAINTIFF, and the other members of the CLASS will not be
23 able to obtain effective and economic legal redress unless the action is maintained as a class
24 action;

25 (e) There is a community of interest in obtaining appropriate legal
26 and equitable relief for the acts of unfair competition, statutory violations and other
27 improprieties, and in obtaining adequate compensation for the damages and injuries which
28 DEFENDANT's actions have inflicted upon the CLASS;

1 (f) There is a community of interest in ensuring that the combined
2 assets of DEFENDANT are sufficient to adequately compensate the members of the CLASS
3 for the injuries sustained;

4 (g) DEFENDANT has acted or refused to act on grounds generally
5 applicable to the CLASS, thereby making final class-wide relief appropriate with respect to
6 these Classes as a whole;

7 (h) The members of the CLASS are readily ascertainable from the
8 business records of DEFENDANT and business records of the DEFENDANT will identify
9 and establish membership in the CLASS; and,

10 (i) Class treatment provides manageable judicial treatment calculated to
11 bring a efficient and rapid conclusion to all litigation of all wage and hour related claims
12 arising out of the conduct of DEFENDANT as to the members of the CLASS

13 28. DEFENDANT maintains records from which the Court can ascertain and
14 identify by job title each of DEFENDANT's non-exempt employees who as have been
15 systematically, intentionally and uniformly subjected to DEFENDANT's corporate policy,
16 practices and procedures as herein alleged. PLAINTIFF will seek leave to amend the
17 complaint to include any additional job titles of similarly situated employees when they have
18 been identified.

19 29. DEFENDANT, as a matter of corporate policy, practice and procedure, failed
20 to pay the members of the CLASS the wages due for all hours worked, including on-call
21 time. All employees in the CLASS and in the CLASS, including the PLAINTIFF,
22 performed the same primary functions and were paid by DEFENDANT according to
23 uniform and systematic company procedures, which, as alleged herein above. This business
24 practice was uniformly applied to each and every member of the CLASS and each and every
25 member of the CLASS, and therefore, the propriety of this conduct can be adjudicated on a
26 class-wide basis. DEFENDANT intentionally, knowingly, and wilfully, engaged in the
27 above described practices.
28

JURISDICTION AND VENUE

30. This Court has jurisdiction over this action pursuant to 28 U.S.C. § 1331, federal question jurisdiction, 29 U.S.C. § 216, the Fair Labor Standards Act, and 28 U.S.C. § 1367, supplemental jurisdiction of state law claims. Independently, this Court also has original jurisdiction over PLAINTIFF's state law class claims pursuant to the Class Action Fairness Act of 2005, 28 U.S.C. § 1332 in that the PLAINTIFF is a resident of California, most of the CLASS is comprised of residents of California, DEFENDANT is a citizen of a state other than California, there are more than 100 individuals in the CALIFORNIA CLASS, and the amount in controversy in this complaint exceeds the sum or value of \$5,000,000. The action is brought pursuant to Federal Rules of Civil Procedure, rule 23. PLAINTIFF brings this action on her own behalf, and on behalf of all persons within the CLASS as herein defined.

31. Venue is proper in this district pursuant to 28 U.S.C. § 1391 because DEFENDANT (i) is subject to personal jurisdiction in this District, and/or (ii) committed the wrongful conduct against certain members of the CLASS in San Diego County, California. At all relevant times, DEFENDANT maintained offices and facilities in San Diego County, California and committed the wrongful conduct against members of the CLASS in San Diego County, California.

FIRST CAUSE OF ACTION

For Unlawful Business Practices

[Cal. Bus. And Prof. Code § 17200 et seq.]

(By PLAINTIFF and the CLASS and against All Defendants)

32. PLAINTIFF, and the other members of the CLASS, reallege and incorporate by this reference, as though fully set forth herein, paragraphs 1 through 31 of this Complaint.

33. DEFENDANT is a "person" as that term is defined under Cal. Bus. & Prof. Code § 17021.

34. Cal. Bus. & Prof. Code § 17200 defines unfair competition as any unlawful,

1 unfair, or fraudulent business act or practice. Section 17200 applies to violations of labor
 2 laws and in the employment context. Section 17203 authorizes injunctive, declaratory,
 3 and/or other equitable relief with respect to unfair competition as follows:

4 Any person who engages, has engaged, or proposes to engage in unfair
 5 competition may be enjoined in any court of competent jurisdiction. The court
 6 may make such orders or judgments, including the appointment of a receiver,
 7 as may be necessary to prevent the use or employment by any person of any
 8 practice which constitutes unfair competition, as defined in this chapter, or as
 9 may be necessary to restore to any person in interest any money or property,
 10 real or personal, which may have been acquired by means of such unfair
 11 competition.

12 California Business & Professions Code § 17203.

13 35. At all times relevant hereto, by and through the conduct described herein,
 14 DEFENDANT have engaged in unfair and unlawful' practices by failing to pay
 15 PLAINTIFFS, and the other members of the CLASS, wages due for on-call work, and have
 16 thereby deprived PLAINTIFF, and the other members of the CLASS, of fundamental rights
 17 and privileges and caused them economic injury as herein alleged. DEFENDANT engaged
 18 in unfair competition by withholding compensation for hours worked. DEFENDANT
 19 further engaged in unfair and unlawful business practices by failing to keep accurate
 20 information and failing to accurately calculate the compensation due DEFENDANT's
 21 employees, in violation of California law. As herein alleged, DEFENDANT's conduct was
 22 unlawful in that, with respect to all California employees, DEFENDANT uniformly violated
 23 California law and regulations, including but not limited to Labor Code §201, §202, §204,
 24 §206.5, §216, §218, §226, §226.7, §510, §512, §1102.5, §1174, §1175, §1198, and 8 C.C.R.
 25 § 11040(7). DEFENDANT's conduct also violated federal law.

26 36. By and through the unfair and unlawful business practices described herein,
 27 DEFENDANT obtained valuable property, money, and services from the PLAINTIFF, and
 28 the other members of the CLASS, and deprived them of valuable rights and benefits
 guaranteed by law and contract, all to their detriment and to the benefit of DEFENDANT so
 as to allow DEFENDANT to unfairly compete against competitors who comply with the
 law.

1 37. All the acts described herein as violations of, among other things, the Cal.
2 Labor Code and Industrial Welfare Commission Wage Order, are unlawful and in violation
3 of public policy; and in addition are immoral, unethical, oppressive, and unscrupulous, and
4 Thereby constitute unfair and unlawful business practices in violation of Cal. Bus. & Prof.
5 Code § 17200 et seq. The conduct of the DEFENDANT was also deceptive in that
6 DEFENDANT expressly and/or implicitly represented to PLAINTIFF and the members of
7 the CLASS that they were not entitled to receive wages for on-call standby hours, and the
8 wages paid for repair work during on-call shifts were correctly calculated.

9 38. PLAINTIFF, and the other members of the CLASS, are entitled to, and do,
10 seek such relief as may be necessary to restore to them the money and property which
11 DEFENDANT have acquired, or of which PLAINTIFF, and other members of the CLASS,
12 have been deprived, by means of the above described unfair and unlawful business practices.

13 39. PLAINTIFF, and the other members of the CLASS, are further entitled to, and
14 do, seek a declaration that the above described business practices are unfair and unlawful
15 and seek injunctive relief to enjoin DEFENDANT from engaging in any of these unfair and
16 unlawful business practices in the future.

17 40. PLAINTIFF, and the other members of the CLASS, have no plan, speedy,
18 and/or adequate remedy at law that will end the unfair and unlawful business practices of
19 DEFENDANT. As a result of the unfair and unlawful business practices described above,
20 PLAINTIFF, and the other members of the CLASS, have suffered and will continue to
21 suffer irreparable harm unless DEFENDANT is restrained from continuing to engage in
22 these unfair and unlawful business practices. In addition, DEFENDANT should be required
23 to disgorge the unpaid wages to PLAINTIFF, and the other members of the CLASS.

24
25 **SECOND CAUSE OF ACTION**

26 **For Failure To Pay Earned Wages and Overtime Compensation**

27 **[Cal. Lab. Code §§ 204, 210, 510, 1194 and 1198]**

28 **(By PLAINTIFF and the CLASS and Against all Defendants)**

1 41. PLAINTIFF, and the other members of the CLASS, reallege and incorporate
2 by this reference, as though fully set forth herein, paragraphs 1 through 40 of this Complaint.

3 42. Cal. Lab. Code § 204 requires employers to pay employees for all hours
4 worked as follows: "all wages... ..earned by any person in any employment are due and
5 payable twice during each calendar month, on days designated in advance by the employer
6 as the regular paydays." Cal. Lab. Code § 510 further provides that employees in California
7 shall not be employed more than eight (8) hours in any workday or forty (40) hours in a
8 workweek unless they receive additional compensation beyond their regular wages in
9 amounts specified by law.

10 43. Cal. Lab. Code §§1194 establishes an employee's right to recover unpaid
11 wages, including overtime compensation and interest thereon, together with the costs of suit.
12 Cal. Lab. Code § 1198 states that the employment of an employee for longer hours than
13 those fixed by the Industrial Welfare Commission is unlawful.

14 44. As set forth herein, DEFENDANTS' policy and practice was to intentionally
15 and uniformly deny payment of wages due for on-call time which were hours by the CLASS.
16 This was done in an illegal attempt to avoid payment of earned wages, overtime
17 compensation and other benefits in violation of the Cal. Lab. Code and Industrial Welfare
18 Commission requirements.

19 45. The PLAINTIFF and the members of the CLASS are not exempt from
20 receiving overtime compensation and other benefits under the Labor Code. The Industrial
21 Welfare Commission, ICW Wage Order No. 4, and Labor Code §515, set forth the
22 requirements which must be complied with to classify an employee as exempt from
23 applicable labor laws. DEFENDANT has classified all employees in the CLASS as non-
24 exempt. For an employee to be exempt from these rules as a bona fide "executive," all the
25 following criteria must be met and DEFENDANT has the burden of proving that:

26 (a) The employee's primary duty must be management of the enterprise, or
27 of a customarily recognized department or subdivision; and,

28 (b) The employee must customarily and regularly direct the work of at least

1 two (2) or more other employees; and,

2 (c) The employee must have the authority to hire and fire, or to command
3 particularly serious attention to his or his recommendations on such actions affecting other
4 employees; and,

5 (d) The employee must customarily and regularly exercise discretion and
6 independent judgment; and,

7 (e) The employee must be primarily engaged in duties which meet the test
8 of exemption.

9 No member of the CLASS was or is an executive because they all fail to meet the
10 requirements of being an exempt "executive" within the meaning of Order No. 4.

11 46. The Industrial Welfare Commission, ICW Wage Order No. 4, and Labor Code
12 §515, set forth the requirements which must be complied with to classify an employee as
13 exempt from applicable labor laws. For an employee to be exempt from these rules as a
14 bona fide "administrator," all the following criteria must be met and DEFENDANT has the
15 burden of proving that:

16 (a) The employee must perform office or non-manual work directly related
17 to management policies or general business operation of the employer; and,

18 (b) The employee must customarily and regularly exercise discretion and
19 independent judgment; and,

20 (c) The employee must regularly and directly assist a proprietor or an
21 exempt administrator; or,

22 (d) The employee must perform, under only general supervision, work
23 requiring special training, experience, or knowledge, or,

24 (e) The employee must execute special assignments and tasks under only
25 general supervision; and,

26 (f) The employee must be primarily engaged in duties which meet the test
27 of exemption.

28 No member of the CLASS was or is an administrator because they all fail to meet the

1 requirements for being an exempt "administrator" under Order No. 4.

2 47. The Industrial Welfare Commission, ICW Wage Order No. 4, and Labor Code
3 §515, set forth the requirements which must be complied with to classify an employee as
4 exempt from applicable labor laws. For an employee to be exempt from these rules as a
5 bona fide "professional," all the following criteria must be met and DEFENDANT has the
6 burden of proving that:

7 (a) The employee is primarily engaged in an occupation commonly
8 recognized as a learned or artistic profession. For the purposes of this subsection, "learned
9 or artistic profession" means an employee who is primarily engaged in the performance of:

10 1) Work requiring knowledge of an advanced type in a field or
11 science or learning customarily acquired by a prolonged course of specialized intellectual
12 instruction and study, as distinguished from a general academic education and from an
13 apprenticeship, and from training in the performance of routine mental, manual, or physical
14 processes, or work that is an essential part or necessarily incident to any of the above work;
15 or,

16 2) Work that is original and creative in character in a recognized
17 field of artistic endeavor, and the result of which depends primarily on the invention,
18 imagination or talent of the employee or work that is an essential part of or incident to any of
19 the above work; and,

20 3) Whose work is predominately intellectual and varied in character
21 (as opposed to routine mental, manual, mechanical, or physical work) and is of such
22 character cannot be standardized in relation to a given period of time.

23 (b) The employee must customarily and regularly exercise discretion and
24 independent judgment; and.

25 (c) The employee earns a monthly salary equivalent to no less than two (2)
26 times the state minimum wage for full-time employment.

27 No member of the CLASS was or is a professional because they all fail to meet the
28 requirements of being an exempt "professional" within the meaning of Order No. 4.

1 48. PLAINTIFF, and other members of the CLASS, do not fit the definition of
2 an exempt executive, administrative, or professional employee because:

3 (a) These employees do not primarily perform managerial or
4 administrative (exempt) duties;

5 (b) Their work hours are primarily spent performing non-exempt duties,
6 including but not limited to performing routine repairs as directed;

7 (c) They do not have the discretion or independent judgment, in that they must
8 follow exacting and comprehensive company-wide policies and procedures which dictate
9 every aspect of their work day; and/or,

10 (d) They do not have the authority to hire and/or fire other personnel;

11 49. During the class period, the PLAINTIFF, and other members of the CLASS,
12 worked more hours than they were paid for because of the time spent on-call under the
13 control of the DEFENDANT, constituting a failure to pay all earned wages. In addition, the
14 consideration of the standby hours worked would result in overtime compensation due.

15 50. Further, when an on-call page is received, and members of the CLASS are
16 required to perform repair, maintenance and troubleshooting duties for which time they are
17 compensated by DEFENDANT, this constitutes a split shift under California law. As a
18 uniform company practice and policy, DEFENDANT miscalculated the compensation due
19 for these pages and calls by failing to pay the members of the CLASS split shift
20 compensation as required by California law.

21 51. At all times relevant times, DEFENDANT failed to pay PLAINTIFF, and
22 other members of the CLASS, wages for the hours they have worked on-call as required by
23 Cal. Lab. Code §204, and overtime compensation for the hours they have worked in excess
24 of the maximum hours permissible by law as required by Cal. Lab. Code §§ 510 and 1198.

25 52. By virtue of DEFENDANT's unlawful failure to pay additional compensation
26 to the PLAINTIFF, and the other members of the CLASS, for the hours actually worked
27 and/or DEFENDANT's unlawful failure to pay the split shift compensation, the
28 PLAINTIFF, and the other members of the CLASS, have suffered, and will continue to

1 PLAINTIFF, and the other members of the CLASS, have suffered, and will continue to
2 suffer, an economic injury in amounts which are presently unknown to them and which will
3 be ascertained according to proof at trial.

4 53. PLAINTIFF, and the other members of the CLASS, request recovery of wages
5 and compensation due according to proof, interest, and costs, as well as the assessment of
6 any and all available statutory penalties against DEFENDANT, in a sum as provided by the
7 Cal. Lab. Code and/or other statutes.

8 54. In performing the acts and practices herein alleged in violation of labor laws
9 and refusing to provide the requisite overtime compensation, the DEFENDANT acted and
10 continue to act intentionally, oppressively, and maliciously toward the PLAINTIFF, and
11 toward the other members of the CLASS, with a conscious and utter disregard of their legal
12 rights, or the consequences to them, and with the despicable intent of depriving them of their
13 property and legal rights and otherwise causing them injury in order to increase corporate
14 profits at the expense of PLAINTIFF and the members of the Class.

15 55. Many of the CLASS members have terminated their employment and
16 DEFENDANT did not timely tender payment of all wages owed as required by Cal. Labor
17 Code §§ 201 and 202. Therefore, as provided by Cal Lab. Code § 203, on behalf of the
18 members of the CLASS who have terminated their employment, PLAINTIFF demands thirty
19 days of pay as penalty for not paying all wages due at time of termination for all employees
20 who terminated employment during the CLASS PERIOD and demands an accounting and
21 payment of all wages due, plus interest.

22
23 **THIRD CAUSE OF ACTION**

24 **For Failure to Provide Accurate Itemized Statements**

25 **[Cal. Lab. Code § 226]**

26 **(By PLAINTIFF and the CLASS and against DEFENDANT)**

27 56. PLAINTIFF, and the other members of the CLASS, reallege and incorporate
28 by this reference, as though fully set forth herein, paragraphs 1 through 55 of this Complaint.

1 57. Cal. Labor Code § 226 provides that an employer must furnish employees with
2 “an accurate itemized statement in writing showing (1) gross wages earned, (2) total hours
3 worked by the employee, (3) the number of piece rate units earned and any applicable piece
4 rate if the employee is paid on a piece-rate basis, (4) all deductions, provided that all
5 deductions made on written orders of the employee may be aggregated and shown as one
6 item, (5) net wages earned, (6) the inclusive dates of the period for which the employee is
7 paid, (7) the name of the employee and his or her social security number, except that by
8 January 1, 2008, only the last four digits of his or her social security number or an employee
9 identification number other than a social security number may be shown on the itemized
10 statement, (8) the name and address of the legal entity that is the employer, and (9) all
11 applicable hourly rates in effect during the pay period and the corresponding number of
12 hours worked at each hourly rate by the employee.”

13 58. At all times relevant herein, DEFENDANT violated Labor Code § 226 with
14 respect to PLAINTIFF and the other members of the CLASS, in that DEFENDANT failed
15 to properly and accurately itemize the gross wages earned, the net wages earned, and all
16 applicable hourly rates in effect during the pay period and the corresponding number of
17 hours worked at each hourly rate for these employees. This failure by DEFENDANT was
18 the intentional result of DEFENDANT’s intentional refusal to compensate for on-call hours
19 worked and/or the miscalculation of compensation conceded to be due in the form of split
20 shift compensation to the CLASS.

21 59. DEFENDANTS knowingly and intentionally failed to comply with Labor
22 Code § 226, causing damages to PLAINTIFF, and the other members of the CLASS. These
23 damages include, but are not limited to, unpaid wages for hours actually worked, the costs
24 expended calculating the true hours worked and the amount of employment taxes which
25 were not properly paid to state and federal tax authorities. These damages may be difficult
26 to estimate. Therefore, PLAINTIFF, and the other members of the CLASS may recover
27 liquidated damages of \$50.00 for the initial pay period in which the violation occurred, and
28 \$100.00 for each violation in subsequent pay period pursuant to Labor Code § 226, in an

1 amount according to proof at the time of trial (but in no event more than \$4,000.00 for
2 PLAINTIFF and each respective member of the CLASS herein), plus costs, pursuant to
3 Labor Code § 226(g).

4
5 **FOURTH CAUSE OF ACTION**

6 **For Violation of the Fair Labor Standards Act**

7 **[29 U.S.C. § 201 et seq.]**

8 **By PLAINTIFF and the CLASS and Against All Defendants)**

9 60. PLAINTIFF, and the other members of the CLASS, reallege and incorporate
10 by this reference, as though fully set forth herein, paragraphs 1 through 59 of this Complaint.

11 61. The Fair Labor Standards Act, 29 U.S.C. §201, et seq., states that an employee
12 must be compensated for all hours worked, including all straight time compensation and
13 overtime compensation. 29 C.F.R. §778.223 and 29 C.F.R. §778.315. This Court has
14 concurrent jurisdiction over claims involving the Fair Labor Standards Act pursuant to 29
15 U.S.C. § 216.

16 62. PLAINTIFF also brings this lawsuit as a collective action under the Fair
17 Labor and Standards Act, 29 U.S.C. § 201, *et seq.* (the "FLSA"), on behalf of all persons
18 who were, are, or will be employed by DEFENDANT in a IT Maintenance Staff position , or
19 in other substantially similar positions during the period commencing three years prior to the
20 filing of this Complaint and ending on the date as the Court shall determine (the
21 "COLLECTIVE CLASS PERIOD"), who performed work in excess of forty (40) hours in
22 one week and did not receive all compensation as required by the FLSA for the hours
23 worked (the "COLLECTIVE CLASS") due to the exclusion of on-call hours worked. To
24 the extent equitable tolling operates to toll claims by the COLLECTIVE CLASS against the
25 DEFENDANT, the COLLECTIVE CLASS PERIOD should be adjusted accordingly.

26 63. Questions of law and fact common to the COLLECTIVE CLASS as a whole,
27 but not limited to the following, include:

28 a. Whether DEFENDANT's policies and practices failed to accurately

1 record all on-call hours worked by PLAINTIFF and the other members of the
2 COLLECTIVE CLASS;

3 b. Whether DEFENDANT failed to adequately compensate the members
4 of the COLLECTIVE CLASS for all hours worked as required by the FLSA;

5 c. Whether DEFENDANTS should be enjoined from continuing the
6 practices which violate the FLSA; and,

7 d. Whether DEFENDANTS are liable to the COLLECTIVE CLASS.

8 64. This cause of action for the violations of the FLSA may be brought and
9 maintained as an "opt-in" collective action pursuant to Section 16(b) of FLSA, 29 U.S.C.
10 216(b), for all claims asserted by the representative PLAINTIFF of the COLLECTIVE
11 CLASS because the claims of the PLAINTIFF are similar to the claims of the members of
12 the prospective COLLECTIVE CLASS.

13 65. PLAINTIFF and the COLLECTIVE CLASS are similarly situated, have
14 substantially similar job requirements and pay provisions, and are subject to
15 DEFENDANT's common and uniform policy and practice of failing to pay for all actual
16 time worked and wages earned, and failing to accurately record all hours worked by these
17 employees in violation of the FLSA and the Regulations implementing the Act as enacted by
18 the Secretary of Labor (the "REGULATIONS").

19 66. DEFENDANT is engaged in communication, business, and transmission
20 throughout the United States and are, therefore, engaged in commerce within the meaning of
21 29 U.S.C. § 203(b).

22 67. 29 U.S.C. § 255 provides that a three-year statute of limitations applies to
23 willful violations of the FLSA. The conduct by the DEFENDANT which violated the FLSA
24 was willful.

25 68. PLAINTIFF and the members of the COLLECTIVE CLASS regularly worked
26 in excess of forty (40) hours in a workweek. Pursuant to the Fair Labor Standards Act, 29
27 U.S.C. § 201, et seq., PLAINTIFF and the members of the COLLECTIVE CLASS are
28 entitled to compensation for all hours actually worked, including on-call hours, and are also

entitled to wages at a rate not less than one and one-half times their regular rate of pay for all hours worked in excess of forty (40) hours in any workweek, which wages were not paid due to the exclusion of on-call, standby time.

69. For purposes of the Fair Labor Standards Act, the employment practices of DEFENDANT were and are uniform throughout California and the United States in all respects material to the claims asserted in this Complaint.

70. DEFENDANT violated the Fair Labor Standards Act by failing to pay hourly employees for all hours worked, including overtime hours, as alleged herein above.

71. As a result of DEFENDANT's failure to pay compensation for hours worked as required by the FLSA, PLAINTIFF and the members of the COLLECTIVE CLASS were damaged in an amount to be proved at trial.

72. PLAINTIFF, therefore, demands that they and the members of the COLLECTIVE CLASS be paid compensation as required by the FLSA for every hour worked in any work week for which they were not correctly compensated, plus liquidated damages, interest and statutory costs as provided by law.

PRAYER

WHEREFOR, PLAINTIFF prays for judgment against each Defendant, jointly and severally, as follows:

1. On behalf of the CLASS:
 - A) That the Court certify action asserted by the CLASS as a class action pursuant to Federal Rules of Civil Procedure, rule 23;
 - B) An order temporarily, preliminarily and permanently enjoining and restraining DEFENDANT from engaging in similar unlawful conduct as set forth herein;
 - C) An order requiring DEFENDANT to pay all wages and all sums unlawfully withheld from compensation due to PLAINTIFF and the other members of the CLASS; and,
 - D) Disgorgement of DEFENDANT's ill-gotten gains into a fluid fund for

1 restitution of the sums incidental to DEFENDANT's violations due to
2 PLAINTIFF and to the other members of the CLASS.

- 3 E) Compensatory damages, according to proof at trial, including compensatory
4 damages for both regular and overtime compensation due PLAINTIFF and the
5 other members of the CLASS according to proof, during the applicable
6 CLASS PERIOD plus interest thereon at the statutory rate;
- 7 F) The wages of all terminated employees due to members of the CLASS as a
8 penalty from the due date thereof at the same rate until paid or until an action
9 therefor is commenced in accordance with Cal. Lab. Code § 203;
- 10 G) The greater of all actual damages or fifty dollars (\$50) for the initial pay
11 period in which a violation occurs and one hundred dollars (\$100) per each
12 member of the CLASS for each violation in a subsequent pay period, not
13 exceeding an aggregate penalty of four thousand dollars (\$4,000), and an
14 award of costs for violations of Cal. Lab. Code § 226.

15 2. On behalf of the COLLECTIVE CLASS:

- 16 A) That the Court certify the Fifth Cause of Action asserted by the
17 COLLECTIVE CLASS as an opt-in class action under 29 U.S.C. § 216(b);
- 18 B) That the Court declare the rights and duties of the parties consistent with the
19 relief sought by PLAINTIFF;
- 20 C) Issue a declaratory judgment that DEFENDANT's acts, policies, practices and
21 procedures complained of herein violated provisions of the Fair Labor
22 Standards Act;
- 23 D) That DEFENDANT be enjoined from further violations of the Fair Labor
24 Standards Act;
- 25 E) That the PLAINTIFF and the members of the COLLECTIVE CLASS recover
26 compensatory, damages and an equal amount of liquidated damages as
27 provided under the law and in 29 U.S.C. § 216(b).

28 3. On all claims:

- 1 A) An award of interest, including prejudgment interest at the legal rate.
- 2 B) An award of liquidated damages, statutory damages, cost of suit, but neither
- 3 this prayer nor any other allegation or prayer in this Complaint is to be
- 4 construed as a request, under any circumstance, that would result in a request
- 5 for attorneys' fees under Cal. Lab. Code § 218.5;
- 6 C) Such other and further relief as the Court deems just and equitable.

7 Dated: August 12, 2009

BLUMENTHAL, NORDREHAUG &
BHOWMIK

8

9 By: 

Norman B. Blumenthal
Attorneys for Plaintiff

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DEMAND FOR JURY TRIAL

PLAINTIFF demands a jury trial on issues triable to a jury.

Dated: August 12, 2009

BLUMENTHAL, NORDREHAUG &
BHOWMIK

By: 

Norman B. Blumenthal
Attorneys for Plaintiff

K:\D\NBB\Green v AT&T\p-Complaint-01.wpd

CIVIL COVER SHEET

The JS 44 civil cover sheet and the information contained herein neither replace nor supplement the filing and service of pleadings or other papers as required by law, except as provided by local rules of court. This form, approved by the Judicial Conference of the United States in September 1974, is required for the use of the Clerk of Court for the purpose of initiating the civil docket sheet. (SEE INSTRUCTIONS ON THE REVERSE OF THE FORM.)

I. (a) PLAINTIFFS

ANTONY GREEN

(b) County of Residence of First Listed Plaintiff Contra Costa County
(EXCEPT IN U.S. PLAINTIFF CASES)

(c) Attorney's (Firm Name, Address, and Telephone Number)

Norman Blumenthal, Blumenthal, Nordrehaug & Bhowmik,
2255 Calle Clara, La Jolla, CA, 92037, (858)551-1223

DEFENDANTS

AT&T SERVICES, INC.

09 AUG 12 PM 4:17

County of Residence of First Listed Defendant
(IN U.S. PLAINTIFF CASES ONLY)

NOTE: IN LAND CONDEMNATION CASES, USE THE LOCATION OF THE
LAND INVOLVED.

Attorneys (If Known)

09 CV 1760 JM

NLS

II. BASIS OF JURISDICTION (Place an "X" in One Box Only)

- ☐ 1 U.S. Government Plaintiff
- ☒ 3 Federal Question (U.S. Government Not a Party)
- ☐ 2 U.S. Government Defendant
- ☐ 4 Diversity (Indicate Citizenship of Parties in Item III)

III. CITIZENSHIP OF PRINCIPAL PARTIES (Place an "X" in One Box for Plaintiff and One Box for Defendant)

- | | PTF | DEF | | PTF | DEF |
|---|----------------------------|----------------------------|---|----------------------------|----------------------------|
| Citizen of This State | <input type="checkbox"/> 1 | <input type="checkbox"/> 1 | Incorporated or Principal Place of Business In This State | <input type="checkbox"/> 4 | <input type="checkbox"/> 4 |
| Citizen of Another State | <input type="checkbox"/> 2 | <input type="checkbox"/> 2 | Incorporated and Principal Place of Business In Another State | <input type="checkbox"/> 5 | <input type="checkbox"/> 5 |
| Citizen or Subject of a Foreign Country | <input type="checkbox"/> 3 | <input type="checkbox"/> 3 | Foreign Nation | <input type="checkbox"/> 6 | <input type="checkbox"/> 6 |

IV. NATURE OF SUIT (Place an "X" in One Box Only)

- | | | | | | |
|---|--|---|--|--|--|
| <input type="checkbox"/> 110 Insurance | <input type="checkbox"/> 310 Airplane | <input type="checkbox"/> 362 Personal Injury - Med. Malpractice | <input type="checkbox"/> 610 Agriculture | <input type="checkbox"/> 422 Appeal 28 USC 158 | <input type="checkbox"/> 400 State Reapportionment |
| <input type="checkbox"/> 120 Marine | <input type="checkbox"/> 315 Airplane Product Liability | <input type="checkbox"/> 365 Personal Injury - Product Liability | <input type="checkbox"/> 620 Other Food & Drug | <input type="checkbox"/> 423 Withdrawal 28 USC 157 | <input type="checkbox"/> 410 Antitrust |
| <input type="checkbox"/> 130 Miller Act | <input type="checkbox"/> 320 Assault, Libel & Slander | <input type="checkbox"/> 368 Asbestos Personal Injury Product Liability | <input type="checkbox"/> 625 Drug Related Seizure of Property 21 USC 881 | <input type="checkbox"/> 820 Copyrights | <input type="checkbox"/> 430 Banks and Banking |
| <input type="checkbox"/> 140 Negotiable Instrument | <input type="checkbox"/> 330 Federal Employers' Liability | <input type="checkbox"/> 370 Other Fraud | <input type="checkbox"/> 630 Liquor Laws | <input type="checkbox"/> 830 Patent | <input type="checkbox"/> 450 Commerce |
| <input type="checkbox"/> 150 Recovery of Overpayment & Enforcement of Judgment | <input type="checkbox"/> 340 Marine | <input type="checkbox"/> 371 Truth in Lending | <input type="checkbox"/> 640 R.R. & Truck | <input type="checkbox"/> 840 Trademark | <input type="checkbox"/> 460 Deportation |
| <input type="checkbox"/> 151 Medicare Act | <input type="checkbox"/> 345 Marine Product Liability | <input type="checkbox"/> 380 Other Personal | <input type="checkbox"/> 650 Airline Regs. | | <input type="checkbox"/> 470 Racketeer Influenced and Corrupt Organizations |
| <input type="checkbox"/> 152 Recovery of Defaulted Student Loans (Excl. Veterans) | <input type="checkbox"/> 350 Motor Vehicle | <input type="checkbox"/> 385 Property Damage Product Liability | <input type="checkbox"/> 660 Occupational Safety/Health | | <input type="checkbox"/> 480 Consumer Credit |
| <input type="checkbox"/> 153 Recovery of Overpayment of Veteran's Benefits | <input type="checkbox"/> 355 Motor Vehicle Product Liability | | <input type="checkbox"/> 690 Other | <input type="checkbox"/> 861 HIA (1395ff) | <input type="checkbox"/> 490 Cable/Sat TV |
| <input type="checkbox"/> 160 Stockholders' Suits | <input type="checkbox"/> 360 Other Personal Injury | | <input checked="" type="checkbox"/> 710 Fair Labor Standards Act | <input type="checkbox"/> 862 Black Lung (923) | <input type="checkbox"/> 810 Selective Service |
| <input type="checkbox"/> 190 Other Contract | | | <input type="checkbox"/> 720 Labor/Mgmt. Relations | <input type="checkbox"/> 863 DIWC/DIWW (405(g)) | <input type="checkbox"/> 850 Securities/Commodities/Exchange |
| <input type="checkbox"/> 195 Contract Product Liability | | | <input type="checkbox"/> 730 Labor/Mgmt. Reporting & Disclosure Act | <input type="checkbox"/> 864 SSID Title XVI | <input type="checkbox"/> 875 Customer Challenge 12 USC 3410 |
| <input type="checkbox"/> 196 Franchise | | | <input type="checkbox"/> 740 Railway Labor Act | <input type="checkbox"/> 865 RSI (405(g)) | <input type="checkbox"/> 890 Other Statutory Actions |
| <input type="checkbox"/> 210 Land Condemnation | <input type="checkbox"/> 441 Voting | <input type="checkbox"/> 510 Motions to Vacate Sentence | <input type="checkbox"/> 790 Other Labor Litigation | <input type="checkbox"/> 870 Taxes (U.S. Plaintiff or Defendant) | <input type="checkbox"/> 891 Agricultural Acts |
| <input type="checkbox"/> 220 Foreclosure | <input type="checkbox"/> 442 Employment | <input type="checkbox"/> 530 General | <input type="checkbox"/> 791 Empl. Ret. Inc. Security Act | <input type="checkbox"/> 871 IRS—Third Party 26 USC 7609 | <input type="checkbox"/> 892 Economic Stabilization Act |
| <input type="checkbox"/> 230 Rent Lease & Ejectment | <input type="checkbox"/> 443 Housing/Accommodations | <input type="checkbox"/> 535 Death Penalty | | | <input type="checkbox"/> 893 Environmental Matters |
| <input type="checkbox"/> 240 Torts to Land | <input type="checkbox"/> 444 Welfare | <input type="checkbox"/> 540 Mandamus & Other | <input type="checkbox"/> 462 Naturalization Application | | <input type="checkbox"/> 894 Energy Allocation Act |
| <input type="checkbox"/> 245 Tort Product Liability | <input type="checkbox"/> 445 Amer. w/Disabilities - Employment | <input type="checkbox"/> 550 Civil Rights | <input type="checkbox"/> 463 Habeas Corpus - Alien Detainee | | <input type="checkbox"/> 895 Freedom of Information Act |
| <input type="checkbox"/> 290 All Other Real Property | <input type="checkbox"/> 446 Amer. w/Disabilities - Other | <input type="checkbox"/> 555 Prison Condition | <input type="checkbox"/> 465 Other Immigration Actions | | <input type="checkbox"/> 900 Appeal of Fee Determination Under Equal Access to Justice |
| | <input type="checkbox"/> 440 Other Civil Rights | | | | <input type="checkbox"/> 950 Constitutionality of State Statutes |

V. ORIGIN

(Place an "X" in One Box Only)

- ☒ 1 Original Proceeding
- ☐ 2 Removed from State Court
- ☐ 3 Remanded from Appellate Court
- ☐ 4 Reinstated or Reopened
- ☐ 5 Transferred from another district (specify)
- ☐ 6 Multidistrict Litigation
- ☐ 7 Appeal to District Judge from Magistrate Judgment

VI. CAUSE OF ACTION

Cite the U.S. Civil Statute under which you are filing. (Do not cite jurisdictional statutes unless diversity):
29 U.S.C. § 216 (Fair Labor Standards Act) and 28 U.S.C. § 1332 (CAFA Jurisdiction)

Brief description of cause: Claims for unpaid compensation under Federal and California law

VII. REQUESTED IN COMPLAINT:

☒ CHECK IF THIS IS A CLASS ACTION UNDER F.R.C.P. 23

DEMAND \$ 5,000,000.00

CHECK YES only if demanded in complaint:
JURY DEMAND: ☒ Yes ☐ No

VIII. RELATED CASE(S) IF ANY

(See instructions):

JUDGE

DOCKET NUMBER

DATE

08/12/2009

SIGNATURE OF ATTORNEY FOR RECORD

FOR OFFICE USE ONLY

RECEIPT #

4158

AMOUNT

350.00

APPLYING IFP

JUDGE

MAG. JUDGE

8/12/09

CR

Court Name: USDC California Southern
Division: 3
Receipt Number: CAS004158
Cashier ID: sramirez
Transaction Date: 08/12/2009
Payer Name: BLUMENTHAL

CIVIL FILING FEE

For: GREEN V. AT AND T
Case/Party: D-CAS-3-09-CV-001760-001
Amount: \$350.00

CHECK

Check/Money Order Num: 12042
Amt Tendered: \$350.00

Total Due: \$350.00
Total Tendered: \$350.00
Change Amt: \$0.00

There will be a fee of \$45.00
charged for any returned check.